

SPRING CREEK COAL CO.

IBLA 85-496

Decided November 25, 1986

Appeal from a decision of the Montana State Office, Bureau of Land Management, dismissing objections to readjustment of coal lease M 069782.

Affirmed.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

The Board of Land Appeals will not reverse as unreasonable a readjustment of a coal lease to establish a 12-1/2 percent production royalty on the value of coal produced by strip or auger methods, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1982) if needed.

APPEARANCES: John S. Lopatto III, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Spring Creek Coal Company has appealed from the March 12, 1985, decision of the Montana State Office, Bureau of Land Management (BLM), dismissing its objections to readjustment of coal lease M 069782. Although appellant's statement of reasons contains a number of arguments, these arguments relate to one single objection: BLM's imposition of the 12-1/2 percent royalty rate specified by 30 U.S.C. § 207 (1982) for coal produced by surface mining methods without taking into consideration the economic impact of this royalty increase on the production and marketing economics of appellant's lease.

[1] This Board has consistently held that when an existing coal lease is readjusted, the terms and conditions of the readjusted lease must be consistent with the statutory and regulatory requirements in effect at the time of readjustment. E.g., Coastal States Energy Co., 70 IBLA 386 (1983), aff'd, Coastal States Energy Co. v. Watt, 629 F. Supp. 9 (D. Utah 1985), appeal docketed, No. 86-1301 (10th Cir. Feb. 24, 1986). The pertinent statutory provision, 30 U.S.C. § 207(a) (1982), provides: "A lease shall require payment of a royalty in such amount as the Secretary shall determine but not less than 12-1/2 percentum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." Although the statute allows the Secretary to

establish a lower rate in the lease for coal mined by underground methods, the 12-1/2 percent royalty is the lowest rate that can be given in a lease for mining coal by surface methods. This statutory provision is implemented by 43 CFR 3473.3-2 which provides that royalties may be set on an individual case basis but sets a 12-1/2 percent floor, consistent with the requirement of the statute. Subsection (d) of that regulation, however, points out that a lessee may apply for a further reduction of royalty pursuant to 43 CFR Part 3480, which implements 30 U.S.C. § 209 (1982).

We recognize that one district court has reversed the Board's position on this issue. FMC Wyoming Corp. v. Watt, 587 F. Supp. 1545 (D. Wyo.), appeal docketed, No. 84-2175 (10th Cir., filed Aug. 29 1984). The District Court in Utah, however, expressly disagreed with the Wyoming court's opinion. Coastal States Energy Co. v. Watt, supra at 21 n.14. Both decisions are under appeal, and it is the Board's practice to apply its own decisional precedent until a binding contrary precedent is established. See generally Gretchen Capital, Ltd., 37 IBLA 392 (1978). We do so here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

James L. Burski
Administrative Judge

